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EXECUTIVE SECRETARIAT

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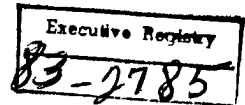
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Executive Secretary
5/31/83
Date

THE WHITE HOUSE
WASHINGTON**CABINET AFFAIRS STAFFING MEMORANDUM**DATE: 5/27/83 NUMBER: 118718CA DUE BY: _____SUBJECT: Cabinet Council on Commerce and Trade - Wednesday, June 1, 19838:45 a.m. in the Roosevelt Room

	ACTION	FYI		ACTION	FYI
ALL CABINET MEMBERS	☐	☐	Baker	☒	☐
Vice President	☒	☐	Deaver	☐	☐
State	☒	☐	Clark	☐	☒
Treasury	☒	☐	Darman (<i>For WH Staffing</i>)	☒	☐
Defense	☐	☒	Harper	☒	☐
Attorney General	☐	☐	Jenkins	☐	☒
Interior	☐	☒		☐	☐
Agriculture	☒	☐		☐	☐
Commerce	☒	☐		☐	☐
Labor	☒	☐		☐	☐
HHS	☐	☒		☐	☐
HUD	☐	☒		☐	☐
Transportation	☒	☐		☐	☐
Energy	☒	☐		☐	☐
Education	☐	☒		☐	☐
Counsellor	☒	☐		☐	☐
OMB	☒	☐		☐	☐
CIA	☐	☒		☐	☐
UN	☐	☒		☐	☐
USTR	☒	☐	CCCT/Gunn	☒	☐
CEA	☒	☐	CCEA/Porter	☐	☐
CEQ	☐	☐	CCFA/Boggs	☐	☐
OSTP	☐	☐	CCHR/Carleson	☐	☐
	☐	☐	CCLP/Uhlmann	☐	☐
	☐	☐	CCMA/Bledsoe	☐	☐
	☐	☐	CCNRE/Boggs	☐	☐

REMARKS: The Cabinet Council on Commerce and Trade will meet on Wednesday, June 1, 1983 at 8:45 a.m. in the Roosevelt Room. The agenda is as follows:

Trade Law Revision/CM#375 (Paper attached)

Automotive Local Content Legislation/CM#274 (Paper to be distributed)

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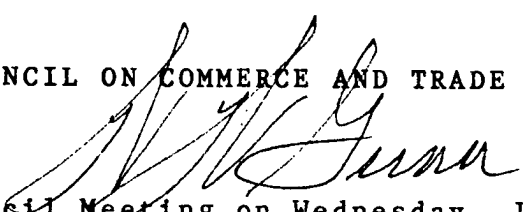
☐ Craig L. Fuller
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456-2823

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456-2800

THE WHITE HOUSE
WASHINGTON

May 26, 1983

MEMORANDUM FOR THE CABINET COUNCIL ON COMMERCE AND TRADE

FROM: WENDELL W. GUNN 

SUBJECT: Agenda for Council Meeting on Wednesday, June 1,
8:45 a.m., Roosevelt Room

The following issues will be discussed at the Wednesday meeting of the Cabinet Council on Commerce and Trade.

- o Trade Law Revision (paper attached)
- o Status Report on Automotive Local Content Legislation (H.R. 1234). Mark-up of the bill is expected by June 7 in the House Energy and Commerce Committee. Also discussed will be the preliminary analysis of a proposal by Rep. Florio which may be offered as a substitute for local content. (Discussion paper will be distributed on Tuesday.)

Attachment



THE SECRETARY OF COMMERCE
Washington, D.C. 20230

MEMORANDUM FOR Members of the Cabinet Council on Commerce and Trade

FROM: Malcolm Baldrige, Chairman Pro Tempore
Cabinet Council on Commerce and Trade

SUBJECT: Trade Law Revision

ACTION FORCING EVENT

Our major trade laws -- the antidumping (AD) and countervailing duty (CVD) laws and Sections 201 and 301 of the Trade Act of 1974 -- are perceived by some in industry and the Congress as less effective than they should be. Critics find the procedures too burdensome and the relief "too little, too late," and believe that we must deal with foreign industrial targeting under our trade laws. Legislative proposals are proliferating.

Should the Administration take the initiative by proposing certain limited revisions of our trade laws?

ANALYSIS

Background

I. Considerations for Administration Action

The House Ways and Means Trade Subcommittee has asked the Administration for help in drafting legislation to improve our trade laws. If we fail to take the initiative in these circumstances, the Administration may be seen as ineffectual and will lose credibility both in the Congress and with industry. Many private sector groups and Congressmen are working on trade law legislation. An Administration initiative might enable us to shape the legislative process and focus those energies on proposals we support, before proposals we would oppose gain momentum.

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This Administration has staunchly advocated free but fair trade. In response to protectionist pressure, we have relied heavily on our unfair trade laws (AD, CVD, Section 301) and on Section 201 (the GATT-sanctioned provision for relief from serious import injury) as the only appropriate weapons for combatting unfair or injurious import competition. If our trade laws are to be accepted as the solution to trade problems, we must be prepared to make them as effective as possible. At the same time, we must avoid the risk of protectionist amendments.

II. AD and CVD Laws

Congressional concerns focus on streamlining the complex and costly AD/CVD procedures established by the Trade Agreements Act of 1979 (including treatment of non-market economies in dumping cases) and on easing and expediting access to the AD/CVD laws.

Based on a systematic review of the AD and CVD laws, which it administers, the Department of Commerce (DOC) believes a number of changes are desirable. The changes proposed would not only respond to congressional concerns but would also ease administration of the statutes. The proposals, discussed further in Appendix A, include:

- Concentrate judicial review in one proceeding following final determinations. At present interlocutory review can occur at many stages, leading to great expense for parties and the government but little practical value.
- Accelerate release of confidential information under Administrative Protective Orders. Current procedures are so time-consuming that petitioners do not receive information in time for it to be useful.
- Simplify adjustments to U.S. and foreign prices in AD proceedings, to eliminate a major source of delay and expense.
- Streamline administrative reviews of outstanding orders by greater use of sampling and averaging of sales and prices to replace thousands of individual sale comparisons in AD cases, and greater use of single, country-wide subsidy rates to replace individual company rates in CVD cases.
- Simplify AD provisions on non-market economies to increase certainty and predictability by eliminating investigations based on "surrogate countries."
- Close potential loopholes in the AD/CVD laws by covering certain leases and contracts for future imports.
- Expedite relief by enabling petitioners to file cases earlier, by clarifying the "threat of injury" concept in AD/CVD cases.

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III. Industrial Targeting

"Industrial targeting," as used here, refers to a government-directed or -assisted policy or program to artificially enhance a selected industry's international competitiveness. It may encompass a complex variety of individually fair and unfair practices, often including insulating the home market, providing fiscal and monetary benefits to the industry, relaxing the country's own antitrust standards, and structuring of the industry to allocate product markets and meet export targets (see Appendix B).

The CVD law, widely suggested as the appropriate vehicle to deal with targeting, would not provide an effective remedy unless it were rewritten to extend its reach and its remedies well beyond the scope of the Subsidies Code. The CVD law could provide no remedy for the effects of targeting on U.S. exports to third markets. In addition, the CVD law can offset only those unfair benefits to foreign industries that are quantifiable, i.e., subsidies. It therefore could not reach many of the nonquantifiable aspects of targeting (e.g., insulated market, relaxation of antitrust standards), and quantifiable subsidies may reflect only a fraction of the advantages provided to an industry under a targeting program. Finally, no CVD remedy is available unless the U.S. industry has suffered material injury or can demonstrate a threat of material injury based on actual or imminent imports. The CVD law therefore provides no basis (even with the contemplated clarification of "threat of injury") for seeking elimination of foreign targeting practices before those practices have set in motion a future injury to a U.S. industry.

A. Principles for Dealing with Industrial Targeting

Any approach to dealing with industrial targeting should:

- Distinguish industry-specific targeting from general industrial policy (i.e., fiscal/monetary policy, investment in education, etc.), and be limited to the former.
- Be designed to secure elimination of the foreign practices where possible.
- Provide remedies for the effects of targeting only where the practices cannot be eliminated and/or the adverse effects are demonstrated.
- Recognize that targeting practices may be ongoing for years before targeted imports reach the U.S., and that targeted imports may significantly harm a U.S. industry long after the foreign practices have ceased.
- Leave discretion in the Executive to determine whether to initiate a case, how to pursue it, and what, if any, remedies are warranted.

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- Discourage forum-shopping between the CVD law and the statute(s) covering targeting.

B. An Approach to Targeting: Sections 301 and 201

Of our existing trade laws, Section 301 most nearly meets these criteria. Section 301 would effectively deal with targeting if, in addition to those changes already contained in the Administration-supported Trade and Investment (reciprocity) Bill, it were amended to include the concept of "threat" of a burden or restriction on U.S. commerce, and a provision for remedying the effects of a foreign practice on U.S. commerce if the foreign practice cannot be eliminated.

Sections 301 and 201 could then operate in targeting cases as follows:

- In a case of current targeting, where few or no targeted goods have been exported to the U.S. or to a third-country market for U.S. goods, a Section 301 petitioner would allege practices that "threaten to burden or restrict U.S. commerce." If the case were initiated, the USG would seek action by the foreign government to eliminate the practices. If the foreign government did not do so and the investigation concluded that targeting was occurring, a Section 301 finding would issue. A remedy designed to eliminate the burden or restriction on U.S. commerce, based on the targeting finding, would issue only if and when direct adverse effects from imports of targeted goods were later shown. This system would maximize chances of eliminating the targeting practices, prevent unilateral U.S. action against ineffective foreign targeting, and allow prompt remedial action when direct adverse effects were demonstrated.
- In a case of past targeting, where the foreign practices have substantially ceased but the effects in this market are continuing, a petitioner would seek relief under Section 201.
- Where both targeting practices and their adverse effects are continuing, a petitioner would file under Section 301. The Executive would have discretion to refer the case to Section 201 where appropriate.

C. Related Statutory and Administrative Changes

Section 301. Several administrative changes would enhance Section 301's effectiveness in dealing with targeting, and would prevent petitioners from filing other kinds of trade cases under the guise of industrial targeting cases. Such changes would include:

- Establishing clear petition standards and clearly articulated investigation procedures and standards for targeting cases.

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- To avoid circumvention of the CVD law's injury test (which Section 301 does not require), clarification that subsidy cases filed under 301 in the trappings of targeting cases would be referred to the CVD law or, where appropriate, would be treated as Subsidies Code cases under 301.
- To further discourage forum-shopping between Section 301 and the CVD law, clarification that the term "subsidy" would not be interpreted more broadly under Section 301 than under the CVD law.
- To simplify the investigation process in targeting cases involving subsidies, subsidy investigations could be performed by those responsible for investigating subsidies under the CVD law.

Section 201. Congressional proposals for amending Section 201 focus on:

- "adjustment" proposals, requiring petitioning industries to develop meaningful plans for enhancing their competitiveness or otherwise adjusting to imports, as a prerequisite to import relief under Section 201.
- lowering the import injury and causation standards from the current "substantial cause of serious injury."
- shortening time periods for investigations and for decisions on relief.
- reducing or eliminating Presidential discretion with respect to granting import relief recommended by the ITC.

Although the Administration may oppose some or all of these proposals, we will have to be prepared to respond to them. Some view the "adjustment" concept as potentially useful in targeting cases by encouraging industries injured by targeted imports to take steps to restore their own competitiveness. There is currently no Administration consensus, however, on whether and how to emphasize plans to enhance industrial competitiveness in the context of Section 201 without injecting government into private business decisionmaking, or on whether statutory changes would be necessary to do so.

Some have suggested that clarifying the standards for "threat of injury" to make it a more meaningful basis for relief under Section 201 would also make 201 more effective in targeting cases, particularly where Section 301 is not clearly appropriate (because targeting practices have diminished) but targeted imports have not yet caused the serious injury required by 201. Altering the current narrow interpretation of "threat of injury" may not require statutory change.

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Recommendations

Take the initiative on trade law revision by proposing limited changes in the AD/CVD laws and a mechanism for dealing with industrial targeting under Section 301, along the lines described above, after further interagency development of proposals. Propose no changes to Section 201 at this time. In light of congressional proposals, undertake an intensive interagency review of how Section 201 might be improved, including whether and how Section 201 relief should be more closely linked to industrial adjustment.

APPENDIX A

ITA STAFF DISCUSSION PAPER ON ANTIDUMPING AND COUNTERVAILING DUTY LAWS

Our review of the antidumping and countervailing duty laws has focused on two goals -- (1) simplifying procedures to reduce complexity and cost and to increase predictability of outcome and therefore commercial certainty, and (2) expanding coverage to include practices of foreign governments which should be covered under these laws but may not have been contemplated when the laws were written or where there may be ambiguity as to coverage.

To accomplish these goals we propose change in seven areas.

1. Limit Judicial Review During Administrative Proceedings to Final Agency Actions

The law as now drafted provides that virtually all preliminary decisions by the International Trade Administration (ITA) at Commerce or the U.S. International Trade Commission (ITC) are subject to interlocutory judicial review. Given the short statutory deadlines, few--if any--interlocutory reviews are concluded before they are mooted by superceding final determinations. Most merely waste private and government resources and add greatly to the costs of these proceedings. (Few antidumping proceedings cost less than \$100,000 in attorneys fees.)

Since judicial review is available concerning all aspects of ITA's and the ITC's final determinations, we do not see any significant disadvantage to eliminating interlocutory review. We are not advocating leaving the administering authorities unbridled discretion. We merely propose concentrating judicial review into one proceeding at the end of the administrative process.

2. Improve Procedures for Release of Information Under Administrative Protective Orders (APO's)

One of the major innovations of the Trade Agreements Act of 1979 was the provision for release of proprietary business information to opposing counsel under an APO (containing stringent sanctions for disclosing the information to the client or other unauthorized persons). We strongly support this provision, but are dissatisfied with the time it takes to process APO requests.

We sought to modify the process administratively, but were rebuffed by the Court of International Trade. Thus, we propose statutory and regulatory change so that (1) requests could be submitted prior to submission of the particular data (since the type of information is known in advance), (2) objections to release would have to accompany data submissions, and (3) information which ITA determined to release would be released as received rather than awaiting submission of all data. These rather elementary technical changes should significantly speed up the APO release process.

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3. Simplify Adjustments to U.S. and Foreign Prices in Antidumping Proceedings

Anyone who has pursued or defended an allegation of dumping is aware of the numerous, detailed, and complicated rules on adjustments in antidumping calculations, particularly those relating to differences in circumstances of sale.

Both the number and the complexity are attributable to the piecemeal fashion in which the rules evolved. Each time a change (usually an addition) was considered necessary, Treasury (then the administering authority) would be subjected to diametrically opposed arguments. Importers and foreign producers would argue that all selling expenses (direct and indirect) should be considered as adjustments to prices, while domestic industries would argue that only selling expenses which are sale specific should be allowed. Sometimes the rule reflected one viewpoint; sometimes the other; and sometimes it attempted a compromise between the two extremes.

We propose a major overhaul that will both reduce the number and internal inconsistency of these rules. The ideal would be to deduct all selling expenses (direct and indirect) from the prices in both the U.S. and foreign markets. This is fully consistent with classic economic theory on dumping, under which one should compare the net return to the manufacturer on export versus domestic sales. It also would be much easier to administer than the current patchwork rules. However, selling expenses almost always are greater in domestic markets than for export sales, so deducting all selling expenses would tend to reduce dumping margins. Thus, domestic interests would strongly oppose such a proposal. Recognizing this, we would have to be prepared to retreat from the ideal to the extent necessary to reduce opposition to manageable proportions.

4. Improve the Process of Administrative Reviews of Outstanding Orders

Whenever an antidumping or countervailing duty investigation results in affirmative findings of dumping (or subsidization) and injury to the U.S. industry (injury need not be proven in some countervailing duty cases), an order is issued. The statute requires periodic reviews of such orders. Their purpose is to determine the amount of duties that should be imposed on imports entering the U.S. during the review period.

-3-

The current administrative review process is cumbersome and complex. In antidumping proceedings the principal problem is that the actual price and cost for each export home market sale must be used. (There can be hundreds of thousands of such sales during a review period.) In the investigative phase of the proceeding (i.e., before issuance of an order), by contrast, the statute now permits Commerce to sample exporters (by regulation Commerce need not investigate more than 60 percent of export volume) and to use weighted average prices for each investigated company.

The principal problem in countervailing duty proceedings is the need to determine the level of subsidies received by each exporter.

We propose permitting use of sampling in both antidumping and countervailing duty proceedings and in dumping weighted average pricing as well. Doing so would greatly simplify the administrative review process. There would be a slight decrease in the precision of rates applicable to specific exporters, and thus would subject us to charges of being unfair. However, we believe the overall impact of simplifying the process outweighs any minor inequities that might result.

5. Enhance the Coverage of the Countervailing Duty Law

The countervailing duty law has proved to be one of the (if not the) most effective of the trade laws. There are certain gaps and ambiguities, though, which we think should be resolved through statutory and regulatory change. One area where change is imperative is the inclusion of leasing arrangements within the scope of the law. Currently, the law only covers sales. Circumstances can exist in which a transaction which is a lease in form is a sale in substance and, therefore, should fall within the ambit of the statute. Another change concerns an area which is only now emerging as one of potential concern. The statute currently uses the term "imports." It is unclear whether an investigation may be initiated prior to the physical importation of the merchandise in question. (This presents the greatest problem in the area of large capital items with long lead times for delivery, where contracts usually are concluded--and hence a sale occurs--well in advance of the actual importation.) Although we have initiated one investigation in these circumstances (Railcars from Canada), the petition was eventually withdrawn so our legal authority to initiate has never been tested in court. We believe that a technical amendment will give us the clear legal authority to initiate an investigation in these circumstances.

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6. Modify Provisions on Non-Market Economies

The provisions on dumping from non-market economies (NME) have proven to be virtually unworkable. ITA is required to select a market economy at the same level of economic development as the NME, convince a producer in that country voluntarily to allow access to its price and cost data, and use those data as the surrogate for home market data from the NME. Senator Heinz proposed modifying the provision to use the lowest average price of domestic or market economy imports as the dumping benchmark. There is strong opposition from opposite directions -- some think the provision too tough; an equal number think it too loose.

The lack of administrability of the current provision cries for reform. While the Heinz approach has a great deal of opposition, no one has developed a practical, politically acceptable alternative. Despite the intellectual and political difficulties, perhaps we could work with the Hill committees to modify the Heinz approach and to create a workable, acceptable alternative.

7. Enhance Coverage of Threat of Injury

Under both the antidumping and countervailing duty laws, relief is available when either actual present injury or threat of injury to the competing U.S. industry is established. Relief based on threat of injury is very important because it expedites relief by enabling petitioners to file cases without waiting until actual injury has been experienced. In addition, relief based on threat of injury is crucial in cases involving procurement for large capital items, where importation (and thus actual injury) will occur months or years after contract award. However, at present, court decisions and ITC practice have severely limited usefulness of this concept. For threat to be found, the Commission must determine that (1) the future injury is real, not speculative; and (2) the threat is imminent. The second criterion is the problem -- "imminent" is being defined in the narrowest possible sense. We propose to loosen the standard for determining when the threat will become actual injury.

How?

APPENDIX BITA STAFF DISCUSSION PAPER ON INDUSTRIAL TARGETINGISSUE

Concern is mounting in the Executive Branch, the Congress, and industry that "industrial targeting" by our trading partners could undermine the current and future international competitiveness of significant segments of U.S. industry. Its effects may be cumulative: the practice strikes primarily high technology and high added value sectors, in which a U.S. industry's inability to compete successfully in one generation of products may make it incapable of investing to compete in the next. Although few industries may be directly targeted, the effects of targeting may be widespread. Over the long term, successful foreign industrial targeting could increase U.S. unemployment, harm the balance of trade, threaten U.S. technological leadership and the national security, and encourage protectionism in response. The perceived failure of our trade laws to deal effectively with industrial targeting has drawn criticism and remedial proposals from Congress and industry. The Administration has taken no position on whether the U.S. should take any action in response to foreign industrial targeting, or if so, whether our trade laws are the appropriate vehicle.

Can U.S. trade laws appropriately deal with industrial targeting, and if so, how?

ANALYSISElements of Targeting

Industrial targeting refers to a government-directed or -assisted policy or program to artificially enhance a selected industry's international competitiveness. It may encompass a complex variety of actions or practices that individually may be fair or unfair. The practices often include insulating the home market, providing a range of fiscal and monetary benefits to the industry, relaxing the country's own antitrust principles, and structuring of the industry to allocate product markets and meet export targets.

Whether and how to reach targeting under our trade laws may depend upon:

- who engages in it. An LDC or NIC infant-industry or export development program, or industrial development programs of nonmarket countries, may involve practices similar to those that characterize targeting by major industrialized countries.

- timing of targeting practices and their effects. In a recently targeted industry, the foreign targeting practices are ongoing, but the targeted industry may not yet have exported to the U.S. or third countries (e.g., possibly 256K RAMs). In a case of past targeting, on the other hand, exports of the targeted industry may have serious and continuing effects in the U.S. and third countries long after the foreign targeting practices have ceased (e.g., possibly machine tools).
- Whether it is successful, i.e., whether it actually has adverse effects on U.S. producers' competitiveness in the U.S. market or third countries. Presumably we do not want to take action against foreign government practices that do not affect us. The adverse effects might be of two kinds. Targeted exports might gain substantial U.S. or third-country market share at the expense of U.S. producers' volume and revenues for future investment ("direct effects"). Or the very existence of a foreign targeting program may affect U.S. business decisions; for example, if a flood of artificially competitive targeted imports is anticipated, a U.S. producer may cut (or be forced by the financial markets to cut) R&D and other investment in that product ("indirect effects").

Possible Responses

An Administration position of "no action" would invite Congressional responses to targeting. The "fight fire with fire" approach of "counter-targeting" would engage the USG in industrial planning, which would be both contrary to Administration policy and, in the view of many, probably ineffective. The remaining option is to encompass certain industrial targeting under our trade laws.

Criteria for a Trade Law Approach to Targeting

Given the complex nature of industrial targeting, any approach to dealing with industrial targeting under our trade laws should:

- Distinguish industry-specific targeting from general industrial policy (i.e., fiscal/monetary policy, investment in education), and be limited to the former.
- Be designed to secure elimination of the foreign targeting practices where possible.
- Provide remedies for the effects of targeting only where the practices cannot be eliminated and/or direct adverse effects from imports of targeted products into the U.S. or third countries are demonstrated. The only trade remedy for indirect adverse effects of targeting should be to seek elimination of the foreign practices.

- Recognize that targeting practices may be ongoing for years before targeted imports reach the U.S., and that targeted imports may significantly harm a U.S. industry long after the foreign practices have ceased.
- Leave discretion in the Executive to determine whether to initiate a case, how to pursue it, and what, if any, remedies are warranted. This flexibility would allow the Executive to distinguish, for example, cases involving LDC's or depressed industry programs from other targeting cases.
- Discourage petitioners from characterizing other trade complaints as "targeting" in order to forum-shop and remedy-shop among our trade laws.

The possibilities for dealing with industrial targeting under our trade laws must be assessed in light of the nature of targeting and these criteria.

Trade Law Options

The countervailing duty (CVD) law would not provide an effective remedy for industrial targeting unless the law were rewritten to extend its reach and its remedies well beyond the scope of the Subsidies Code.

The CVD law could not provide a remedy for the effects of targeting in third markets. Because many high-tech industries (e.g., aircraft, computers) require world-scale production, dealing only with targeting that affects the U.S. market would not solve the targeting problem.

The CVD law and the philosophy behind it allows it to offset, by countervailing duties, only those unfair benefits to foreign industry that are quantifiable. It therefore could not reach many of the non-quantifiable aspects of targeting (e.g., insulated market, relaxation of antitrust standards). The quantifiable subsidies it could reach may reflect only a fraction of the advantages given an industry under a targeting program.

Because the CVD law requires an injury test and provides only for countervailing duties as a remedy, a CVD remedy for targeting would often be inappropriate or too late to be useful. In a case of current targeting, action by the foreign government to eliminate its targeting practices (and therefore the potential future effects of targeting) would be desirable, but would be unavailable under the CVD law. No CVD remedy would be possible until the U.S. industry had suffered material injury or could demonstrate an imminent threat of material injury from the targeting.

Section 337 is intended to reach private (as opposed to government) unfair methods of competition in the importation of articles into the U.S. Application of Section 337 to targeting would require a substantial refocusing of that intent. Like the CVD law, Section 337 as written could address only the effects of targeting practices and could not seek elimination of the practices before effects were felt. Section 337 could not reach the effects of targeting in third countries.

Sections 301 and 201. The broad scope and range of remedies available under Section 301 make it the most effective trade law vehicle for dealing with most industrial targeting. A few minor changes in the statute and its administration would enhance its effectiveness for this purpose. Where targeting has already led to significant competition in the U.S. market from injurious imports of targeted products, Section 201 would provide an appropriate remedy.

Proposal for Handling Industrial Targeting
Under Sections 301 and 201

Administration-supported legislation now in the Congress, the Danforth Trade and Investment Bill, would amend Section 301 in certain respects. The statute would be effective for industrial targeting if, in addition, it were amended to include:

- The concept of "threat" of a burden or restriction on U.S. commerce. This would allow the filing of a targeting petition before targeted goods have been exported to the U.S., and while the targeting practices can still usefully be eliminated. It would be particularly important to industries with rapidly evolving technologies.
- A definition of "threat" that sets a meaningful standard for a determination.
- A provision for remedies to mitigate or eliminate the effects of a foreign practice on U.S. commerce if the foreign practice cannot be eliminated.
- An expanded definition of "unreasonable" to more clearly cover practices affecting exports to the U.S. as well as exports from the U.S.

With these changes in Section 301, Sections 301 and 201 could operate in targeting cases as follows:

- In a case of current targeting, where few or no targeted goods have been exported to the U.S. or to a third-country market for U.S. goods, a Section 301 petitioner would allege practices that "threaten to burden or restrict U.S. commerce." If the case were initiated, the USG would seek action by the foreign government to eliminate the practices. If the foreign government did not do so and the

investigation concluded that targeting was occurring, a Section 301 finding would issue. A remedy designed to eliminate the burden or restriction on U.S. commerce, based on the targeting finding, would issue only if and when direct adverse effects from imports of targeted goods were later shown.

This system would maximize chances of eliminating the targeting practices, prevent unilateral U.S. action against ineffective foreign targeting, and allow prompt remedial action when direct adverse effects were demonstrated.

- In a case of past targeting, where the foreign practices have substantially ceased but the effects in this market are continuing, a petitioner would seek relief under Section 201. An industry victimized by imports of targeted goods would presumably benefit from self-help measures to rehabilitate its own competitiveness; the adjustment provisions of Section 201 could therefore be particularly useful in a targeting case.
- In a case where targeting practices continue but direct adverse effects are already being felt, a petitioner would file under Section 301. The Executive would have discretion to refer the case to Section 201 where appropriate.

Related Statutory and Administrative Changes

Section 301. Several administrative changes would enhance the effectiveness of Section 301 in dealing with targeting cases, and would prevent petitioners from filing other kinds of trade cases under the guise of industrial targeting cases. Such changes would include:

- Establishing clear petition standards and clearly articulated investigation procedures and standards for targeting cases. Section 301 was originally designed primarily to reach foreign policies and practices that affect U.S. exports, where the remedy is usually to secure elimination of the foreign practice. Targeting cases, on the other hand, like a few recent Section 301 petitions, would more often deal with foreign policies or practices that have effects in the U.S. market. Although this proposal emphasizes securing elimination of foreign targeting practices, if foreign governments refuse to act the USG would be under pressure to provide import restrictions as a remedy. The U.S. trade laws that have traditionally involved import restrictive remedies -- Section 201 and the AD/CVD laws -- have specific standards and procedures for investigations. In targeting cases, which are likely to be highly complex, investigation standards and procedures would simplify the analysis and

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provide a useful basis for the Executive's discretionary decisions on remedies. Such standards and procedures would also signal our trading partners that we are serious about preventing (or at least remedying the injurious consequences of) targeting.

- Subsidies are usually a hallmark of targeting, and the CVD law requires an injury test not required by Section 301. Consequently, petitioners may try to circumvent the injury test of the CVD law by clothing a subsidy case in targeting allegations and filing under Section 301. To avoid this, regulations should clarify that, whenever it is determined that a "targeting" case is really a subsidy case, the petitioner will be referred to the CVD law or that, where appropriate, the case would be treated as a Subsidies Code case under Section 301.
- To further discourage forum-shopping between Section 301 and the CVD law, it should be made clear that the term "subsidy" will not be interpreted more broadly under Section 301 than it is interpreted under the CVD law.
- To simplify the investigation process in complex targeting cases (and other Section 301 cases) involving subsidies, the subsidy investigation under Section 301 could be performed by those responsible for investigating subsidies under the CVD law.

Section 201. As currently drafted and administered, Section 201 provides a remedy for serious injury substantially caused by imports, including targeted imports. The statute would be more effective in the targeting area, however, with administrative or statutory changes designed to:

- Redefine the standards for "threat of injury" to make it a more meaningful basis for relief. Without such change, targeting cases filed when the targeting practices have diminished or ceased and the import effects do not yet constitute "serious injury" might fall into a gap between a clear 301 targeting case and a 201 case; as a result, the industry would have to suffer serious injury before it could obtain any action at all.
- Emphasize requiring industries petitioning for relief under Section 201 to submit meaningful plans for enhancing their competitiveness, as a means of encouraging industries injured by targeted imports to restore their own competitiveness.